



July 31, 2002

Mr. Doug Lowe
Criminal District Attorney
Anderson County
500 North Church Street
Palestine, Texas 75801

OR2002-4189

Dear Mr. Lowe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166439.

The Anderson County Sheriff's Department (the "department") received a request for various information related to three classes of people, all of whom were connected in some way to the requestor's sojourn in the Anderson County Jail.¹ You state that you do not maintain information with respect to the first class of people. With respect to the information concerning the second and third classes of people, you state that the request as worded requires the department "to create a list of names and therefore, create a document that does not exist." Alternatively, you claim that the information concerning the second and third classes of people is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that the department does not possess information responsive to the part of the request encompassing the first class of people. You also state that the part of the request encompassing the second and third classes of people requires the department to create new

¹The requestor seeks the following information pertaining to three classes of people, individuals who made the decision regarding the requestor's release from jail, individuals who actually removed the requestor from jail or recorded him by audio or video, and individuals who took the requestor into custody and contacted emergency medical services personnel to transport him to the hospital for treatment and evaluation. The specific records requested are as follows: personnel records, unofficial supervisory or management notes for past or future performance evaluations, letters of commendation, discipline, and warning, promotion or demotion evaluations, qualifications when hired, promoted, or demoted to present position, official history of employment including positions held and length of employment, official description of positions held, and official description of positions temporarily detailed.

information. The Public Information Act (the "Act") does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Moreover, the Act applies only to information in existence at the time the governmental body receives the request for information. *See* Open Records Decision Nos. 452 at 2-3 (1986) (document is not within the purview of the Act if, when a governmental body receives a request for it, it does not exist), 342 at 3 (1982) (Act applies only to information in existence, and does not require the governmental body to prepare new information). Accordingly, we find that the Act does not require the department to respond to the request encompassing the first class of people, which you state the department does not possess. However, we note that a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision No. 561 at 8 (1990). You have made such an effort in sending this office material responsive to the parts of the request concerning the second and third classes of people. Accordingly, we consider your arguments with respect to the submitted information.

We first note that some of the submitted information is made expressly public under section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

The submitted reports and estimates are expressly public under section 552.022(a)(1) and (5). Therefore, you may only withhold this information if it is confidential under other law. You argue that this information is confidential under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.119, and 552.130. Although you argue that the submitted information is excepted under section 552.103 of the Government Code, section 552.103 is a

discretionary exception and therefore is not "other law" for purposes of section 552.022.² Accordingly, we will address the material made public under section 552.022(a)(1) and (5) under all your claimed exceptions except section 552.103. We will address the remainder of the submitted material under all your claimed exceptions.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as the protection provided by the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Much of the information submitted is not the type of information that is generally considered highly intimate or embarrassing under the test in *Industrial Foundation*. *See id.* Moreover, this office has found that the following types of information are not excepted from required public disclosure under common-law privacy: educational background and training, Open Records Decision Nos. 455 (1987), 444 (1986); past work history, Open Records Decision Nos. 455 (1987), 444 (1986); names, addresses, and telephone numbers of job references and their comments, Open Records Decision No. 455 (1987); performance evaluations, Open Records Decision Nos. 470 (1987), 400 (1983); and reasons for a public employee's demotion, dismissal, or resignation, Open Records Decision Nos. 444 (1986), 329 (1982), 278 (1981).

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive litigation exception, section 552.103), 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

However, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under constitutional or common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, physical handicaps, and results of mandatory urine testing). We have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy.

Additionally, this office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989) (credit reports, financial statements, and other personal financial information), 373 (1983) (assets and income source information). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Thus, information about the essential features of an employee's participation in a group insurance program funded in part by the state involves him in a transaction with the state and, therefore, is not excepted from disclosure by a right of privacy. On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the city. Open Records Decision No. 600 (1992). We believe that some of the submitted information constitutes highly intimate and embarrassing financial information. Further, we believe there is no legitimate public interest in this information. Accordingly, you must withhold the personal financial information we have marked according to section 552.101 in conjunction with common-law privacy. See also Gov't Code § 552.136.

Section 552.101 also encompasses information protected by other statutes. Some of the submitted documents are confidential under section 1701.306 of the Occupations Code, which is applicable to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") forms. Section 1701.306 provides in relevant part:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306(a)-(b) (emphasis added). The department must withhold the documents we have marked in accordance with section 1701.306 of the Occupations Code.

We next note that some of the submitted documents are confidential under section 1701.454 of the Occupations Code. Section 1701.454 provides as follows:

(a) A report or statement submitted to TCLEOSE under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this section, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the commission employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. The submitted documents include copies of the TCLEOSE Form F-5, Report of Resignation or Separation of License Holder. It does not appear that any of the exceptions specified by section 1701.454(a) apply. Thus, the department must withhold the marked TCLEOSE form reports under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

We note that the submitted information contains a peace officer's accident report form. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this case, as the requestor has not supplied two or more pieces of information, you must withhold the submitted peace officer's accident report form under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

We observe that some of the submitted information includes criminal history record information ("CHRI"). CHRI obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. §20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Texas Department of Public Safety (the "DPS") is confidential. *See* Gov't Code §411.083(a); *see also id.* §§ 411.106(b), .082(2) (defining criminal history record information). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *See id.* §411.084; *see also id.* §411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, when a law enforcement agency compiles information that depicts an individual as a criminal suspect, arrestee, or defendant, the compilation of information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993). Thus, any criminal history information that was obtained from the NCIC or TCIC networks, or that is protected by privacy under *Reporters Committee*, must be withheld from disclosure under section 552.101 of the Government Code. We have marked this information accordingly.

Section 552.101 also encompasses confidentiality provisions such as those found in the MPA. The MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c). We have marked the documents that must be withheld pursuant to the MPA.

We note that the submitted materials include fingerprint information subject to sections 559.001, 559.002, and 559.003 of the Government Code, which provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

(1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the office must withhold the fingerprints in the submitted documents, which we have marked, under section 552.101 in conjunction with section 559.003 of the Government Code.

You next assert that the submitted information is excepted under section 552.103. Section 552.103(a) provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 at 2 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

Although you state that the requestor "has made public statements that he feels he was medical [sic] unfairly treated and physically abused as a result of his incarceration," and that on a public access television program, the requestor stated that "he has talked to someone and would be talking to more someone's when asked if he had spoken with an attorney," we cannot conclude in these circumstances that litigation is reasonably pending. Moreover, we note that you inform us that the requestor has also stated to the local newspaper that he does not presently intend to file a lawsuit. Accordingly, you may not withhold any of the submitted information under section 552.103.

You next argue that portions of the submitted information are excepted under section 552.108. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you state that "[s]ome of the documents in the files relate to pending criminal investigations and the disclosure would interfere with the detection, investigation, or prosecution of crime," you do not identify any such information. Further, after careful review, no such explanation is apparent on the face of the submitted documents. Accordingly, we find that you have not met your burden under section 552.108 and that the no part of the submitted information is excepted under this section.

Next, you contend that some of the submitted information is excepted from disclosure under section 552.117(2) and section 552.1175 of the Government Code. Section 552.117(2) of the Government Code excepts from required public disclosure the home addresses, home

telephone numbers, social security numbers, and family member information of peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, section 552.117(2) requires you to withhold this information about the department's peace officers.

Section 552.1175 provides in pertinent part:

(a) This section applies only to:

...

(2) county jailers as defined by Section 1701.001, Occupations Code;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Therefore, if the county jailers elected not to allow access to this information in accordance with the procedures under section 552.1175 of the Government Code, we believe the department must withhold this information from required public disclosure pursuant to section 552.1175. If not, the jailers' information must be released. We have marked the information that is subject to section 552.117(2) and may be subject to section 552.1175.

Section 552.117(2) makes confidential the majority of the social security numbers in the submitted information. However, we note that the other social security numbers may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the responsive records are

confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

You next argue that portions of the submitted information are excepted under section 552.119. Section 552.119 excepts from public disclosure a photograph of a peace officer, that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. This office has determined that this provision excepts such photographs from disclosure without the need for any specific showing that release of the photograph would endanger the life or safety of the officer. Open Records Decision No. 502 (1988). The photographs you have submitted appear to be images of jailers, and not peace officers. Therefore, we find that section 552.119 is inapplicable to the submitted images.

Finally, section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Accordingly, we have marked the information that the department must withhold under section 552.130.

In summary, because it possesses no material responsive to the part of the request encompassing the first class of people, the department need not respond to this part of the request. However, the department must withhold from disclosure the medical and personal financial information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold from disclosure the TCLEOSE documents relating to a physician's medical fitness evaluation under section 552.101 in conjunction with section 1701.306 of the Occupations Code. We have marked the documents that must be withheld from disclosure under section 552.101 in conjunction with section 1701.306 of the Occupations Code. The department must withhold from disclosure other medical records, which we have marked, in accordance with the MPA. The department must withhold from disclosure the marked TCLEOSE Form F-5 under section 552.101 in conjunction with section 1701.454 of the Occupations Code. The department must withhold the submitted peace officer's accident report form under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. CHRI, which we have marked, is excepted from disclosure under section 552.101 in conjunction with chapter 411 of the Government Code. The department must withhold from disclosure from disclosure the

submitted fingerprint information under section 552.101 in conjunction with section 559.003 of the Government Code. The department must also withhold from disclosure the personnel information relating to peace officers we have marked under section 552.117(2). The department must similarly withhold from disclosure the personnel information relating to jailers under section 552.1175, if the jailers elected not to allow access to this information in accordance with the procedures under section 552.1175 of the Government Code. We note that social security numbers in the submitted information not excepted from disclosure under sections 552.117(2) and 552.1175 may nevertheless be private under federal law if those numbers were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. Finally, we have marked motor vehicle information that the department must withhold from disclosure under section 552.130. The department must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 166439

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